Docket No.: 11-0711

MEMORANDUM_____

TO: Claudia E. Sainsot, Administrative Law Judge

FROM: Christopher Foy, Legal Extern

DATE: December 13, 2011

SUBJECT: The factors that federal and state courts, as well as administrative agencies, look to when awarding attorney's fees to be paid by another (as opposed to fees that are purely between a party and his/her/its attorneys)

Assessing the reasonableness of attorneys' fees is well-documented in case law.[1] "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). However, a rigid mathematical approach can give no consideration to the importance of the issues, their difficulty, or the extent to which a party prevails on those issues. *Id.* at 428. Instead, the fee should be determined by the facts in the case, in light of numerous factors. *Id.* at 429.

Indeed, one of the most important considerations is the "the amount involved and the results obtained." *Hensley*, at 430 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 174 (5th Cir. 1974)). *Johnson* adopts the twelve factors set forth by the American Bar Association Code of Professional Responsibility, Disciplinary Rule 2-106, which are:

> (1) [T]he time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount

[1] The *Hensley* Court reaffirms the traditional American rule that unless otherwise provided by contract or statute, a prevailing party is responsible for paying its own attorney's fees.

> involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Id. fn3.

In *Hensley*, the Court reviewed *Johnson v. Georgia Highway Express*, *Stanford Daily v. Zurcher*, *Davis v. County of Los Angeles*, and *Swann v. Charlotte-Mecklenburg Board of Education*. *Id.* at 430-31. In each of the three cases, the prevailing party was awarded a full fee based upon the twelve factor test; however, in *Hensley*, the prevailing party did not succeed on every issue. In footnote five, the *Hensley* court recognizes cases in the third, seventh, and ninth circuits which flatly stated that "plaintiffs should not recover fees for any work on unsuccessful claims." *Id.* at 432, fn5. Other courts of appeals "have suggested that prevailing plaintiffs generally should receive a fee based on hours spent on all non-frivolous claims." *Id.* The Court proceeded to determine the reasonableness of fees awarded to a partially prevailing party.

The *Hensley* Court found that after calculating the fee based upon reasonable hours and rate, "[t]he party seeking an award of fees should submit evidence supporting the hours worked and rates claimed. *Where the documentation of hours is inadequate, the district (trial) court may reduce the award accordingly*." *Hensley* at 433 (emphasis added). A good-faith fee petition must exclude excessive, redundant, and otherwise unnecessary fees, as is required by counsel's ethical duty. *Id.* at 434.

However, the product of reasonable hours multiplied by a reasonable rate does not end the inquiry. There remain other considerations that may lead the trial court to adjust the fee upward or downward, including the important factor of the "results obtained."[2] This factor is particularly crucial where a party requesting fees is deemed "prevailing" even though that party succeeded on only some of the claims. In this situation, two questions must be addressed. First, did the party fail to prevail on claims that were unrelated to the claims on which it/he or she succeeded? Second, did the party achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award? *Id.* If a party has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole, times a reasonable hourly rate, may be an excessive amount. This will be true even where the party's claims were interrelated, nonfrivolous, and raised in good faith. *Hensley* at 436.

[2] The trial court also may consider other factors identified in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714, 717-719 (5th Cir. 1974), though it should note that many of these factors usually are subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate. See *Copeland v. Marshall*, 641 F.2d 880, 890 (1980) (en banc).

There is no precise rule or formula for making these determinations. The trial court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment. This discretion, however, must be exercised in light of the considerations that *Hensley* identified. *Id.* at 436-37.

The fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. The applicant should exercise "billing judgment[3]" with respect to the hours worked and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims. *Id.* Moreover, the courts have held that there will be no "sympathy [for] any claim that a district court abused its discretion in awarding unreasonably low attorney's fees in a suit in which plaintiffs were only partially successful if counsel's records do not provide a proper basis for determining how much time was spent on particular claims." *Id.* at fn12.

The *Hensley* court reemphasized that the trial court has discretion when determining the amount of a fee award. It concluded, essentially, that this is appropriate in view of the trial court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters. The *Hensley* Court ruled that it remains important, however, for a trial court to provide a concise but clear explanation of its reasons for a fee award. When an adjustment is requested on the basis of either the exceptional or limited nature of the relief obtained by the applicant for fees, the trial court should make clear that it has considered the relationship between the amount of the fee awarded and the results obtained. *Id.*

Hensley held that the extent of a fee applicant's success is a crucial factor in determining the proper amount of an award of attorney's fees. Where that party has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded. When a lawsuit consists of related claims, a party who has won substantial relief should not have his attorney's fee reduced simply because the trial court did not adopt each contention raised. But where such a party achieved only limited success, the trial court should award only that amount of fees that is reasonable in relation to the results obtained. *Hensley* at 440.

The "reasonableness" factors and corresponding rationale of *Hensley* permeates Illinois case law. In *Rackow v. Illinois Human Rights Com'n*, the plaintiffs (employees of Century 21 who managed a land trust rental property) violated the Illinois Human Rights

[3] In the private sector, "billing judgment" is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority." *Copeland v. Marshall,* 641 F.2d 880, 891 (D.C. Cir.1980) (en banc) (emphasis in original).

Act by denying the defendant rental property because he had children over the age of five that would be staying with him. *Rackow*, 152 Ill.App.3d 1046, 504 N.E.2d 1344 (1987). The plaintiffs appealed the attorney's fees awarded pursuant to section 8-108(G) of the Illinois Human Rights Act. Much like the twelve factors adopted in *Johnson v. Georgia Highway Express, Inc.*, the *Rackow* court analyzed the attorney's fee reasonableness using guidance from the Illinois Code of Professional Responsibility, DR 2-106.[4] *Rackow* at 1062-63.

The amount of the award of attorney fees depends upon whether the work was reasonably required and necessary for the proper performance of the legal services under the circumstances. The criteria generally utilized for determining whether a statutory award of fees is reasonable includes the skill and standing of the attorney, the nature of the controversy, the difficulty and novelty of the issues in the case, the importance of the subject matter, the degree of responsibility involved in the management of the case, the time and labor required to be expended on the case, the customary charge in the community, and the benefits resulting to the client. *Id.* at 1062-63. However, these normative factors can only take us so far without examples.

In *Rackow*, the defendant's attorney filed his affidavit of hours spent listing the amount of time spent, the legal services rendered, and the dates the services were performed. Plaintiffs filed a response, taking exception to certain portions of the petition requesting fees and listing specific objections to some of the legal services rendered and the time allegedly spent on performing legal duties. The administrative law judge (the "ALJ") made a determination from the petition and response that 61.93 hours were reasonably spent by defendant's attorney in the matter, and that the case was one of first impression, and that the attorney possessed special expertise in the field of discrimination law. *Id.* at 1063.

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[4] Illinois Code of Professional Responsibility: DR 2-106 (87 Ill.2d R. 2-106)

Rule 1.5. Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

Source: http://www.state.il.us/court/supremecourt/rules/art_viii/artviii.htm

The ALJ ruled that three of plaintiffs' objections to the fee petition were valid and overruled nine additional objections. The ALJ also found that extensive research and analysis were necessary, that the issues were unusually difficult and time consuming, and that the attorney's skills in this area were impressive. The Commission affirmed the finding that 61.93 hours were expended by the attorney and, applying a 75 dollars per hour fee, awarded $4,644.75 as reasonable attorney fees. *Id.*

Finally, the plaintiffs objected to defendant's attorney's inclusion in their request for fees the time spent to prepare the petition for attorney fees which was listed as two 1/2 hours and was awarded to the attorney. The plaintiffs did not cite any authority to support their argument opposing the award of fees for this purpose. The statute authorizes generally the awarding of attorney fees, and, as plaintiffs' actions in violating the Act necessitated the hiring of an attorney and the incursion of fees. The *Rackow* Court found no abuse in the decision to award fees for the time spent preparing the petition for attorney fees. *Id.* at 1064.

In the same year as the *Rackow* decision, the Appellate Court of Illinois issued the touchstone case of *Kaiser v. MEPC American Properties, Inc*. *Kaiser* stands for the proposition that the party seeking attorney fees from another bears the burden in seeking those fees. Moreover, the fee petition must be sufficiently specific to allow the trial court to determine the reasonableness of the fees requested. *Kaiser*, 164 Ill.App.3d 978, 518 N.E.2d 424 (1987).

Kaiser arose from a lessor/lessee contract dispute. The Kaisers sued for declaration of rights and obligations under the contract with MEPC. One of the provisions in the contract required that, “Lessee shall pay all costs and expenses, including attorneys' fees which may be incurred by or imposed on Lessor either in enforcing this lease or in any litigation to which Lessor, without fault on its part, may be made a party.” *Kaiser* at 981. Summary judgment was entered in favor of MEPC. *Id.*

In its fee petition, MEPC requested fees totaling $53,172.35 and costs of $1938.39. In support, it submitted the affidavits of (1) Peter Hess of Hess, Kaplan & McDowell, Ltd., which was the law firm originally retained to represent it in this litigation and (2) Margaret Garvey, a partner in the law firm of Freeborn and Peters, which was retained following the withdrawal of Hess, Kaplan & McDowell from the case. *Id.* at 982.

In his affidavit, Peter Hess set forth his and his partners' educational backgrounds and stated that prior to July 1982, his firm had represented MEPC in various real estate transactions; that it represented MEPC in this litigation from July 1982 until June 1985; that the standard hourly rates charged to its clients, including MEPC, were $135 per hour between 1982 and 1984 and $150 per hour thereafter; that the exhibits attached to the affidavit were (A) copies of bills and daily time reports sent to and paid by MEPC, and (B) a list of the services performed and the time allotted to

each; that Exhibit B was prepared from time records maintained in the ordinary course of business and available for inspection; and that the total amount of fees and costs billed to and paid by MEPC were $23,943.75 and $104.20, respectively. Margaret Garvey submitted a similar fee petition stating the amount of time spent thereon and the hourly rate charged for each of the attorneys, paralegals, and docket clerks who worked on the case. The final total amount requested for those services was $28,228.60, plus costs of $1834.19. *Id.*

The Kaisers challenged Hess' fee petition and requested the contemporaneous business records from which the Hess exhibits were generated. *Id.* Further, they challenged Garvey's fee petition arguing that the fees were excessive and unreasonable because the detailed time records attached to Garvey's affidavit revealed numerous instances of duplication of services and excessive and unnecessary amounts of time spent by several attorneys on the same matters, and that the costs were not properly chargeable to them because they were of the type that are normally included in office overhead and/or were not reasonably and necessarily required by the litigation. *Id.* at 983.

The *Kaiser* court stated that it is well-settled that the party seeking the fees in court always bears the burden of presenting sufficient evidence from which the trial court can render a decision as to their reasonableness, citing *Fiorito v. Jones; 72 Ill. 2d 73, 377 N.E.2d 1019 (1978); Heckmann v. Hospital Service Corp.*, 104 Ill.App.3d 728; and *Ealy v. Peddy*, 138 Ill.App.3d 397, 485 N.E.2d 1182 (1985). According to *Kaiser,* an appropriate fee consists of reasonable charges for reasonable services (See *In re Estate of Healy*, 137 Ill.App.3d 406, 484 N.E.2d 890 (1985)). They argued that to justify a fee, more must be presented than a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client, citing *In re Marriage of Angiuli*, 134 Ill.App.3d 417, 480 N.E.2d 513 (1985), because this type of evidence, without more, does not provide a court with sufficient information as to their reasonableness—a matter which cannot be determined on the basis of conjecture or on the opinion or conclusions of the attorney seeking the fees. In support, it also cited *Flynn v. Kucharski*, 59 Ill.2d 61, 319 N.E.2d 1 (1974).

The *Kaiser* court concluded that the petition for fees must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefore. It concluded that because of the importance of these factors, it is incumbent upon the petitioner for fees to present detailed records maintained during the course of the litigation containing facts and computations upon which the charges are predicated. *Kaiser* at 983-84.

The *Kaiser* court determined that, once presented with these facts, the trial court should consider a variety of additional factors such as the skill and standing of the

attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client, citing *Ashby v. Price*, 112 Ill.App.3d 114, 445 N.E.2d 438 (1983), and whether there is a reasonable connection between the fees and the amount involved in the litigation, citing *In re Estate of Healy*, 137 Ill.App.3d 406, 484 N.E.2d 890 (1985); *In re Marriage of Ransom*, 102 Ill.App.3d 38, 429 N.E.2d 594 (1981); and *Losurdo Bros. v. Arkin Distributing Co.*, 125 Ill.App.3d 267, 465 N.E.2d 139 (1984). *See, Kaiser* at 984.

Upon examining the Hess exhibits, the *Kaiser* court ruled that "Exhibit A" was nothing more than a compilation of 11 photocopied bills sent to MEPC between October 1982 and July 1984 together with approximately six "daily time reports," consisting of work descriptions such as "Court Appearance," "Review Doc's," (*sic.*) "Pleadings," "Status," and the like. *Id.* at 985. It found that these documents lacked foundation and were devoid of any meaningful information to assist in determining the reasonableness of the fees charged. It concluded that the mere fact that MEPC paid the bills does not satisfy its burden in that regard. The *Kaiser* court also noted that on one of the bills had a handwritten notation "breakdown has been requested," which suggested MEPC's dissatisfaction with the adequacy of the information provided on the bill. *Id.*

Exhibit B revealed that, while Hess stated that his firm "was engaged to represent MEPC in this case in July 1982," the summary included charges for approximately nine hours of work at an hourly rate of $135 for services performed between October 1981 and July 1982. Also included in the summary were approximately 13.5 hours followed by the notation "no description" of the services performed. Seven hours were attributed to "file review," four hours to "review of complaint," 15.75 hours to "review" or "document review," and 27.25 hours to "pleadings" or "review of pleadings." "Court appearances," without more, accounted for 35 hours of charges and 17.75 hours were billed for services described only as "status." *Id.* at 986. "Research" charges totaled 5.5 hours and 5.25 hours were billed for "telephone calls," only 1.5 of which were accompanied by a notation identifying the person with whom the conversation was had. Similarly, "meetings" and "conferences," without further explanation, totaled 5.75 hours and meetings "with Hess," "with plaintiff's attorney," "with defendant's attorney," and "with Kaiser's attorney," accounted for 9.25 hours. Also included in the summary were charges for items listed only as "correspondence," "status letter," "discovery," "review of lease and complaint," and "attorney opinion." *Id.*

Beyond Exhibit B, Hess stated that the records regarding the services performed no longer existed. Also, following entry of the daily time logs of the individual attorneys into a "client control sheet" the time slips had been destroyed. *Id.* at 982.

The trial court in *Kaiser* found this list of descriptions to be an inadequate basis on which to predicate a fee award. It ruled that without detailed information concerning the nature of, and the actual time expended on, each of the legal tasks performed, the identity of who performed them, how they related to the litigation and whether they were necessarily required, it was impossible to render a finding that they were reasonable and, therefore, compensable. *Id.* at 986.

The appellate review of Exhibit B affirmed that even those descriptions which were provided were too vague and general to have any practical utility or to satisfy the burden that MEPC had to meet, in order to demonstrate its entitlement to compensation for the charges listed therein. (Cf. *Board of Education v. County of Lake*, 156 Ill.App.3d 1064, 509 N.E.2d 1088 (1987) (timesheet and summaries containing only general descriptions of work performed are not an adequate substitute for detailed contemporaneous time records)). *Id.*

MEPC had argued that the trial court had the entire case file before it and the authority to review that file to substantiate their fee petition. The *Kaiser* Court recognized that the trial court has discretion to consider the contents of the record; however, that court reiterated that the burden rests with the party seeking fees. (See also *Ealy v. Peddy*, 138 Ill.App.3d 397, 485 N.E.2d 1182 (1985)). *Id.*

The trial judge in *Kaiser* noted that the court files spanned a period of several years and determined that it was neither appropriate nor judicially feasible for him to conduct the in-depth examination necessary to locate documents and pleadings which might substantiate that certain services referred to in the summary were performed. Also, it would not be a proper exercise of discretion to arbitrarily valuate the services solely on the basis of those documents. *Id.* at 986-87.

Thereafter, MEPC filed a motion to reconsider and vacate the previous ruling disallowing attorneys fees. *Id.* at 987. However, it is well-settled that the intended purpose of a motion to reconsider is to bring to the court's attention newly-discovered evidence which was not available at the time of the hearing, (See *In re Marriage of Rosen*, 126 Ill.App.3d 766, 467 N.E.2d 962 (1984) or changes in the law or errors in the court's previous application of existing law (*Abbey Plumbing & Heating Inc. v. Brown*, 47 Ill.App.3d 719, 365 N.E.2d 115 (1977)).

MEPC did not request reconsideration on any of these bases but, rather, on the ground that it had reconstructed the time records of Hess, Kaplan & McDowell vis-a-vis the court file in the form of an appendix which it wished to present as evidentiary support for its fee request. The sources cited as support for these entries were either documents in the file which had been prepared by Hess, Kaplan & McDowell or the previously-discussed affidavit and supporting exhibits of Peter Hess, in which Hess stated that all of the time records relating to this litigation had been destroyed. Thus,

although the court file indicates that Hess, Kaplan & McDowell performed some legal work for MEPC, in the absence of contemporaneous time records, the *Kaiser* Court concluded that the hours reflected in the appendix appear to be more a product of conjecture by the attorneys preparing it, rather than an accurate computation of the time actually expended thereon. The *Kaiser* Court denied the motion to reconsider because the appendix did not contain information which was unknown or unavailable at the time of the earlier hearing. *Id.*

The *Kaiser* Court then proceeded to analyze Margaret Garvey's fee petition and noted that in contrast with Hess, Kaplan & McDowell, it was very detailed. *Id.* at 988. It listed services, for which, Garvey billed MEPC in connection with this litigation. The *Kaiser* trial court found, however, that it contained numerous charges for review, revisions, redrafting and corrections of pleadings and other documents, as well as for office memoranda and conferences among the attorney with primary responsibility for the case activity-who was admitted to the bar in 1984 and had joined the firm in September of that year-and four other attorneys (all partners) and three paralegals in the firm. *Id.*

The *Kaiser* trial court stated that, without a showing of the reasons for the multiple revisions and corrections, those charges were not properly chargeable to the Kaisers. Similarly, the trial court found that it could not be determined from the summary, nor did it seem tenable, that all of the time billed for conferences was spent on issues directly related to this litigation. Proceeding through the summary in a line-by-line fashion, the trial court disallowed certain fees that it determined to be excessive, unnecessary, duplicative or unsubstantiated. That court also found some of the charges for work performed by the paralegals to be either non-compensable, or only partially compensable, on the ground that several of the tasks performed by them were non-legal in nature. *Id.*

The *Kaiser* trial court further noted that while the Garvey summary was quite detailed in its itemization of work performed by Freeborn & Peters, it was impossible to determine exactly what amount of time was expended on each task listed in most instances. *Id.* The time for all work performed by an attorney on a given day was aggregated into a single hourly total for that day. Consequently, there was no completely objective manner, by which, to determine the reasonableness of the charges the time for all work performed by an attorney on a given day was aggregated into a single hourly total for that day. *Id.*

On the issue of costs, the *Kaiser* Court affirmed the trial court's decision to deny MEPC's request for reimbursement of: $639 for computerized legal research charges, $493 for photocopying, $239 for "disbursement administrative fees" or for those amounts listed by Freeborn & Peters for delivery and telephone charges and "docket

maintenance fees." *Id.* at 989. With regard to the computerized research charges, MEPC cited *Bennett v. Central Telephone Co. of Illinois*, 619 F.Supp. 640 (N.D.Ill.1985), where, in a class action suit, the district court allowed a $570 Lexis charge in addition to the fees charged for the time of the attorney who conducted the research. MEPC contended that the trial court disallowed not only the Lexis charge but also some of the fees for the attorney's research time. The *Kaiser* appellate court pointed out, however, that, if the lower court determined that portions of the research itself were unnecessary or that the time expended thereon was excessive, it logically follows that the charges for the equipment used to do that research should also be disallowed. *Id.*

The *Kaiser* appellate court also noted that a comparison of the daily time summary and the statement of costs disclosed that there were no entries contained in the time records for any of the five days, on which, computerized research charges appear in the statement of costs. It stated that there was no indication of the subject matter of that research, the amount of time spent on it, or who performed it. It concluded that absent substantiation that this expense was necessarily required by the litigation, it cannot be said that it was a reasonable and recoverable cost chargeable to the Kaisers. *Id.*

As to the remaining items contained in the statement of costs submitted by Freeborn & Peters, the *Kaiser* appellate court and the trial court believed that under the reasoning of *Losurdo Bros. v. Arkin Distributing Co.*, 125 Ill.App.3d 267, 465 N.E.2d 139 (1984), the "costs" of photocopying, check processing, legal newspaper subscriptions, telephone and delivery services and the like are, more accurately, *ordinary "expenses" which are normally included in office overhead and, in turn, encompassed within the hourly attorney fee rate charged by the firm*. *Id.* at 990 (emphasis added).

The *Kaiser* appellate court was not persuaded by the assertion of the attorney from Freeborn & Peters that it is the firm's policy to separately-charge for these items according to each client's use, rather than raising the hourly rate charged to all clients. There was nothing presented establishing the existence of such a policy or any showing that its fees were lower than those customarily charged in the community for the same services. *Id.*

Finally, the *Kaiser* appellate court did allow the amounts paid by MEPC to Hess, Kaplan & McDowell for filing the complaint and serving summons. These were recoverable costs and it appeared from the transcript of proceedings that the lower court inadvertently overlooked when fixing the final award. *Id.*

In contrast, *Harris Trust & Savings Bank v. American National Bank & Trust Co. of Chicago*, 230 Ill.App.3d 591, 594 N.E.2d 1308 (1992) held that Harris Bank's fee petition was adequately specific to support the trial court's award of attorney fees and related costs. The fee petition contained detailed records maintained during the course

of the litigation, provided a full and particular accounting of all work completed on the matter, included a concise explanation of the nature of the task and parties involved, the attorneys working on the matter, the amount of time expended, and the hourly rate charged. Moreover, *Harris* affirms *Kaiser*'s ruling that overhead costs—photocopying, telephone, legal research, etc.—may not be separately included in the fee petition.

Estate of Price v. Universal Cas. Co., 334 Ill. App. 3d 1010, 779 N.E.2d 384 (2002) held that a fee petition should include records containing facts and computations, upon which, the charges are based and specify the services provided, by whom, as well as the time expended and the hourly rate charged. The *Price* Court concluded that time records should detail the activity performed, the date of the activity, who performed the activity and the time spent on each activity. It noted that a fee petitioner cannot be permitted to aggregate all the work performed within a given month into a single hourly total for that month, citing *Mars v. Priester*, 205 Ill. App. 3d 1060, 563 N.E.2d 977 (1990). It ruled that fee petitions must provide hours expended, corresponding time sheets, and evidence as to how the time was spent and who performed what tasks. (*See also Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 595, 740 N.E.2d 501 (2000). And finally, it stated that the trial court may rely on its own knowledge and experience to determine whether the hours claimed and work performed are reasonable, citing *Heller Financial, Inc. v. Johns-Byrne Co.*, 264 Ill. App. 3d 681, 637 N.E.2d 1085 (1994).

In re Estate of Bitoy, 395 Ill. App. 3d 262, 917 N.E.2d 74 (2009) held that fee petition did not fully comply with requirements of *Kaiser v. MEPC American Properties, Inc.*, 164 Ill.App.3d 978, 518 N.E.2d 424 (1987). Although *Kaiser* was not a probate case, the court determined that its specificity requirements applied to fee petitions in a probate estate. The court awarded $177,000 in fees and $1,225.16 in costs to the petitioner of the $255,922.84 sought.

For an example of a court's discretion while awarding attorneys fees see generally, see *Bethune Plaza, Inc. v. Lumpkin*, 755 F. Supp. 223 (1991). That court broke things down very specifically:

Complaint/T.R.O./Motion for Preliminary Injunction

Plaintiff's counsel sought 64.75 hours to draft these motions. The court determined that this figure should more properly be 27 hours. This figure takes into account 12 hours for drafting the complaint and T.R.O. In total, the complaint, an amendment to the complaint, and plaintiff's request for a T.R.O. only encompass 22 pages, excluding exhibits. Three additional hours were given for review of the complaint after defendants' answer. The remaining 12 hours were devoted to the preliminary injunction. Other hours were spent preparing a witness for the T.R.O. hearing, but by

stipulation of the parties, the T.R.O. became a P.I. hearing. Thus, based on the similarities between the motions, evidence some of the hours were excessive and duplicative the attorney's hours were reduced.

Response to Defendants' Motion to Dismiss/Motion to Alter or Amend Judgment Dismissing Complaint/Reply

Plaintiff's counsel sought 271 hours for these motions. The court reduced this number down to 180, based on the factual and legal overlap with the other motions. (A numerical breakdown is provided in the text). The court also took the time to address the fact that counsel represented himself as well-versed in nursing home regulatory law; however, his response to defendants' motion was excessive and the case law on the matter was long-established. Therefore, the hourly totals were reduced as redundant.

Settlement

Plaintiff's fee petition only included a request for 11 hours devoted to settlement. The court found that the plaintiff was entitled to those 11 hours in their entirety.

Communications with Client and Opponent

Plaintiff sought 7.25 hours in this area. The court granted this claim in full.

Calculations

Plaintiff proffered $150 per hour as reasonable compensation, with the exception of clerical hours. Counsel performed 88.5 hours of "clerical work" such as filings, service of process, retrieval of appellate decisions, copying and cite-checking. Although counsel performed these activities, the court concluded that they could have been done by a paralegal or an associate. The court ruled that while counsel may recover for time spent on these services, a court may adjust the hourly rate charged for the services to comport with the nature of the activities. Thus, after a reduction of 10 hours, the remaining 78.5 hours received $75 per hour as clerical compensation. By the court's calculation, the plaintiff was entitled to 634.75 hours. When multiplied by the $150 hourly rate, the total was $95,212.50. Additionally, 78.5 hours, termed as clerical, multiplied by $75 led to a result of $5887.50. *Id.*

Summary

The main considerations for attorneys seeking fee compensation are:

- Develop a system that shall be kept in the ordinary course of business.
    - Teach this practice to everyone involved with the case.
- Keep meticulous and contemporaneous records.
    - Be specific about what you are doing and the time spent.
    - Be specific about who you are talking to and the purpose for it.
    - Do not engage in post hoc summaries of your work.
    - You will not be as diligent in your recollection as you would be in the present and you run the risk of having your hours reduced.
    - Do not aggregate all hours into a single total.
    - Keep records on a line-by-line basis or a manner that will enable a reviewing court to identify distinct claims.
    - The fee petitioner bears the burden of proving their fees; therefore, ambiguities will be assumed against the petitioner.
- Exercise “billing judgment.”
    - “billing judgment” is an important component in fee setting. It is no less important here.
    - Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority.” *Copeland v. Marshall,* 641 F.2d 880, 891 (1980) (en banc) (emphasis in original).
    - Be wary of excessive and duplicative hours.
- Keep these records until the court issues its fee petition decision and longer.